

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF MISSOURI
WESTERN DIVISION**

| | | |
|----------------------------|---|----------------------------|
| CAROL COOK, |) | |
| |) | State Court Case No.: |
| and |) | 1716-CV29722 |
| |) | |
| RICHARD COOK, |) | |
| |) | Federal Court Case No.: |
| Plaintiffs, |) | |
| |) | |
| vs. |) | JURY TRIAL DEMANDED |
| |) | |
| CRACKER BARREL OLD COUNTRY |) | |
| STORE, INC., |) | |
| |) | |
| Defendant. |) | |

**DEFENDANT CRACKER BARREL OLD COUNTRY STORE, INC.'S
ANSWER AND AFFIRMATIVE DEFENSES TO PLAINTIFFS' PETITION**

Defendant Cracker Barrel Old Country Store, Inc., (hereinafter, "Defendant"), by and through undersigned counsel, in Answer to Plaintiffs Carol and Richard Cook's (hereinafter "Plaintiffs") Petition hereby states the following:

1. Defendant is without sufficient information to either admit or deny the allegations contained within Paragraph 1; therefore, Defendant denies the same.
2. Defendant admits only that it is a Tennessee corporation with its principal place of business located within the State of Tennessee and denies any and all other allegations contained within Paragraph 2.
3. Denied.
4. Defendant is without sufficient information to either admit or deny the allegations contained within Paragraph 4; therefore, Defendant denies the same.
5. Denied.

6. Defendant denies that any male employee, agent and/or servant of Defendant “ran into Carol Cook, knocking her to the ground.”

7. Denied.

COUNT I – NEGLIGENCE

8. Defendant incorporates by reference its answers to all preceding Paragraphs above as though fully set forth herein.

9. Paragraph 9 contains legal conclusions requiring no response. To the extent a response is required, Defendant is without sufficient information to either admit or deny the allegations contained within Paragraph 9; therefore, Defendant denies the same.

10. Denied.

11. Paragraph 11 contains legal conclusions requiring no response. To the extent a response is required, Defendant is without sufficient information to either admit or deny the allegations contained within Paragraph 11; therefore, Defendant denies the same.

12. Denied.

13. Denied.

COUNT II – LOSS OF CONSORTIUM

14. Defendant incorporates by reference its answers to all preceding Paragraphs above as though fully set forth herein.

15. Defendant is without sufficient information to either admit or deny the allegations contained within Paragraph 15; therefore, Defendant denies the same.

16. Denied.

AFFIRMATIVE DEFENSES

17. In further answer and by way of affirmative defense, Defendant states that Plaintiffs have failed to state a claim upon which relief may be granted.

18. In further answer and by way of affirmative defense, Defendant states that if Plaintiff Carol Cook suffered injury as alleged, which is denied, all such damage was caused or contributed to be caused by the negligence or fault of Plaintiff Carol Cook, which should be compared to diminish or bar Plaintiffs' recovery. Plaintiff Carol Cook was negligent by:

- a. Failing to keep a careful lookout;
- b. Failing to use due care for her own safety; and
- c. Failing to keep control of her body movements so as to avoid any danger.

19. In further answer and by way of affirmative defense, Defendant states that Plaintiffs have failed to mitigate their alleged damages.

20. In further answer and by way of affirmative defense, Defendant states that if Plaintiff Carol Cook suffered injury as alleged, which is denied, the sole and proximate cause of Plaintiffs' alleged damages, if any, were the intervening acts or omissions of persons or entities other than Defendant and over whom Defendant had no control.

21. In accordance with R.S.Mo. 537.060 and in the event any Plaintiff has or will in the future enter into any release, settlement agreement, covenant not to sue or not to enforce a judgment, Defendant prays for a reduction of Plaintiffs' claims by the stipulated amount of the agreement, or in the amount of consideration paid, whichever is greater.

WHEREFORE, having responded to every allegation in Plaintiffs' Petition and having pled affirmative defenses, Defendant prays that Plaintiffs' Petition be dismissed at Plaintiffs' cost.

DEMAND FOR JURY TRIAL

Defendant demands a trial by jury on all triable issues herein.

BROWN & JAMES, P.C.

By: 

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*Attorneys for Defendant Cracker Barrel Old
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CERTIFICATE OF SERVICE

I hereby certify that on 3rd day of JANUARY, 2018, I electronically filed the foregoing with the Clerk of the Court by using the CM/ECF system which will send a notice of electronic filing to all counsel of record. In addition, a true and accurate copy of the above and foregoing was served via United States Mail, postage prepaid, upon:

Laurie Del Percio and Douglas R. Horn
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